Petition

83-682

No. 82-2125

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

HERBERT HARRIS,

Petitioner,

vs.

CITY OF NORFOLK, VIRGINIA

NORFOLK REDEVELOPMENT & HOUSING AUTHORITY

SCOPE

CHRYSLER MUSEUM

and

ALL OTHER DEFENDANTS CLAIMING TITLE TO CERTAIN LANDS ALLEGEDLY HELD UNLAWFULLY

Respondents

PETITION FOR WRIT OF CERTIORARI
FROM THE UNTIED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioner Herbert Harris, Pro Se.
1822 Fourth Street, N. W.
Washington, D. C. 20001
(202) 332-3128

QUESTIONS PRESENTED

Did the City of Norfolk, Virginia violate the law when it too my Aunt's properties in 1921 without an eminent domain Law and without due process of law.

Did the City of Norfolk, Virginia violate the law by not going into Court on this matter after waiting 26 years.

The City of Norfolk, Virginia knew that Mary A. Harris had passed away. A notice of her death was in the City Clerk's Office on October 11, 1920.

The City of Norfolk, Virginia knew that I was Mary Harris' blood nephew. My Aunt had filed a missing person's report to the Police Department to that effect in 1914.

PARTIES INVOLVED

The following parties have an interest in the outcome of this case:

HERBERT HARRIS, Petitioner

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The City of Norfolk intentionally concealed all the facts from Mary A. Harris' heirs.

The City of Norfolk violated the Virginia Constitution of 1897, Code 2920. The City cannot collect Real Estate taxes or fail to collect them within five (5) years.

The City of Norfolk used improper public notice by issuing a little Union Tabloid that is used by the Union for its members that no Black man or an Indian could be a member of. That the little Tabloid could not in 1946 or in 1983 be purchased at any newsstand; and that little Tabloid is used only to take Black men and Indian's properties.

That Mary A. Harris' property sales

were held at a private sale. No one but the City of Norfolk was allowed to bid on all of that valuable property. No Black man could come in the front door of the Court House to see a notice if one was posted in 1946.

The reason for the long wait on two of Mary A. Harris' houses - 1039 and 1041 Carrollton Street, was because they were houses of prostitution and the rent for those two houses was $250 a week. Those two houses were not torn down for 19 years. I am a citizen of Washington, D. C. by diversity 1331 U.S. 28.

I was denied my constitutional rights, Article VII Amendment XIV, Section I, the City not protecting my Aunt's properties, instead of tearing

the houses down.

Also denied the protection of Fifth Amendment 1791, nor be deprived of life, liberty or property without due process of law. Nor shall private property be taken for public use without jus: compensation and intentional concealment of facts from the heirs.

It was the intention of the City of Norfolk and the Norfolk Redevelopment and Housing Authority to take Mary A. Harris' properties.

The City had to be redeveloped and it needed her properties to do it. Without her properties, no redevelopment.

The City knew that prostitution was the 3rd largest business in Norfolk from 1900 - 1935.

I did not know that my Aunt, Mary A. Harris, owned any properties until I returned to Norfolk in 1978, the first time since 1914.

When I went to the corner of Cumberland and Charlotte Street, I found a large buidling standing on the spot where I once lived. I went to City Hall to find out what had happened to my Aunt's property, houses numbered 505 509 and 511 Cumberland Street. The next day I went to the file room of the Clerk's office. There I found that in 1927 or 1928 the City of Norfolk had demolished her properties, cleared the land, rezoned it, and turned it over to the Norfolk Redevelopment and Housing Authority to sell to Chrysler Company who purchased it and gave it to the City.

The City of Norfolk took all of

the properties belonging to Blacks and some Indians in areas from Freemason Street to beyond Brambleton Street and other areas starting in 1927 and by 1939. All without due process of law.

Failing to collect real estate on my aunt's properties for five years, the property was barred. The words used by the City Attorney that it meant award - and an award is the giving of punitive or compensatory for damage.

The Law speaks of contracts under Seal. A mortgage is a contract under seal which Mary's properties were. The owner of a house agrees to pay the City $35.00 a month real estate taxes which does not change a mortgage from a contract. A lien against her house does not change it.

The City of Norfolk, Virginia is a political subdivision of the State regarded as a citizen of the State. Illinois vs. City of Milwaukee, 406 U.S. 91, 97 (1972), Bullard vs. City of Cisco, Texas, 290 U.S. 179, 187 (1933). A citizen against a citizen should not be treated as a criminal..

The City of Norfolk and the Norfolk Redevelopment and Housing Authority committed many acts of fraud and acted fraudulently by someone in the City Government, beginning July 9, 1923 by someone signing Mary A. Harris' name to Deed on the properties of 1039-1041 Carrollton Street. These were houses of prostitution that rented for $125.00 a week and the City of Norfolk intentionally concealed all these facts from Mary A. Harris and her heirs for 26 years.

Auction of Mary A. Harris' properties was held privately on March 5, 1947 at 12 Noon in the Room of the Norfolk Real Estate Board on Monticello and Arcade Streets in Norfolk. The Honorable Clyde H. Jacobs in Court of Chancery ordered special Commissioner L. Shields Parson, Jr. to seal it on December 11, 1946 as a private sale. No one but the City of Norfolk bidded on that property, and the City of Norfolk cannot show any documents that anyone else made a bid. The valuable property was sold for $1,150.00. The Decree is in Chancery dated November 29, 1946, Section 4.

Decree of Reference - March 12, 1946, Section Six, 9th line in The Time, Advocate a Tabloid. Laws of Virginia calls for general publication. It is against public policy to take Blacks or poor people's property, and putting

the notice in a little Tabloid that only certain color could see it. Proper notification to heir - The Virginia Law 2455 - Repealed by Act of 1918 - p 635, Section 2456. Top of page TIT 42 - Limitation of Suits reads as follows: "Be charge thereby, or his agent, but not under Seal Within 5 years".

Virginia Law Process and Order of Publication Title 60, Code 1887, 3231 1902-3-4, page 623 X proper dispense with such publication in a newspaper. The Time Advocate is not a newspaper, it is a Tabloid 8x10 - only 4 pages used by a Union for its members only. It is not sold on any newspaper stand now nor in 1946. No Black man or Indian could be a member of that Union. No where in the world could anyone but a member know about a sale on a house. This Tabloid is used only then and now to take Black's properties from them. The Library of

Congress in Washington, D. C. does not list it as a newspaper. The City of Norfolk did not use this little Tabloid in 1920 or 1938 when it was wheeling and dealing in Mary A. Harris' properties nor did it use it when it was taking properties belonging to Whites, as I have stated the case in my Petition.

I am the blood nephew of Mary A. Harris who put me in the public schools in Norfolk, Virginia in 1906. The record won't show in the City. Also the City cannot find where the State of Virginia issued me a chauffeur's license in 1912. I was told by letter that the City did not keep records that far back. I have been damaged by the City of Norfolk and the Redevelopment and Housing Authority, suffering physically, mentally and financially, being denied my aunt's properties.

TABLE OF AUTHORITIES

LACHES

D. C. Court of Appeals Case, Martin v. Carter, ET - Al. D.C. App. No. 13273, Mary 14, 1979. Reversed per. Kelly J. Newman, C. J. and Kern J. concur, cases Kress and Co. 398, U.S. 144, 157 (1970) International Underwtiters, Inc. v. Boyle. Laches which state claims inacted by defendant comes into lay when two prerequisites have been met. The plaintiff must have been prejudiced by defendant delay and defendant delay must have been unreasonable. King v. Kitchen Mayie, D.C. App. 391 A.2d. 1184, 1187, 88 (1978).

Van Boury v. Nitze, 128 U.S. App. D.C. 301, 388, F.2d 557 (1967) in this case the trial Judge focuased on the decree of prejudice appellee and defendant suffered through the delay or an equitable remedy there can be few specific rules governing the application of laches.

Great respect is due the weighing of the equities made by the trial Judge who applies the Rule. Gardner v. Panama Railroad, Co. 342 U.S. 29 (1951) absent a duty to act. However a dely in filing suit is not unreasonable. Hinesly v. Davidson, 335, So. 2d. 380, Ala. (1976) in this case appellant has argued that since a land owner is under no duty to quiet title arising from a forged deed A Fortiori, he cannot unreasonably delay bringing such action and given rise to Laches, thereby. Anderson v. Village Homebuilders, Inc., 401 - Sec 60. 81 N.E. 2d. 430 (1948) in essence a forged deed can never be protected by Laches.

DOCTRINE OF LACHES

The length of time which must have passed in order for Laches to apply, varies with the circumstances of each case. No right rule, such as a specific

Statute of Limitation controls in a case where fraud is an issue. Holmberg v. Armbrech, 327 U.S. 392, 396 (1946), George v. Ford, 37 App. D.C. 315.333 (1971) as had been stated.

Contract under general control law unambigurous meaning of an instrument is controlling. Vogel v. Temeco Oil Co., 465 F.2d 563, D.C. Cir. (1972) and the Court determines the (intention). E.P. Hinkel and Co., Inc. v. Mahattion Co., 506 F.2d. 201.204, D.C. Cir (1974). In performing this task the Court should construe the contract as a whole so as to give meaning to all of the express terms. California Pacific Bank v. Small Business Administration, 557 F.2d. 218.223, 9th Cir. (1977). Finally, the question of interpreting the plain language of a Contract, Clayman v. Goodman, D.C. Cir 1973, Franolau Corp. v. United States, 568, F.2d 687.691, N 10 Cir Ct. (1977)

UNIFORM SALE ACT

Puffing and agreement not to bid a secret bidding by or on behalf of the seller commonly called puffing, is fraudulent enabling purchaser who has been deceived thereby to avoid the sale. (b) Agreement among purchasers at auction sale not to bid against each other are fraudulent as regard the seller default.

Forging Mary A. Harris' name to deeds after her death that damage her heirs. This caused them much suffering, physically, mentally and financially, and concealing these facts for 26 yers. The City of Norfolk Virginia is to protect its citizens who own property, not tear the property down and sell some of the property and doing wheeling and dealing job on two others.

King, ET ux. v. Kitchen Magic, Inc., ET AL. D.C. App. No. 12351, Sept. 14, 1978

Nine years in filing suit.

Jasper v. Carter, D.C. App. No. 18.540 18years in filing suit.

Rule 13[3]. Please send to the U.S. Supreme Court the original jurisdiction briefs procedure in original action. Maybe transported to this Court. The Judge ruling in this matter. The 4th U.S. Court of Appeals on intent and intentional concealment of facts. Case No. 75-1603 in conflict with its own decision (e). Proper publication of notice to unknown heirs. Can a citizen such as the City of Norfolk wait 26 years before taking action on another citizen. The question was raised. I had no right in a Federal Court. I was not a citizen of the State of Virginia. Could anyone take one's property without due process of law? Other questions - could any citizens sign a person's name to a deed, be it city or another citizen, and not consider it fraud, even if the person is dead? Not once, but three times.

And the property is yielding $12,000 a year, and keep on signing for 19 years. Norfolk was at that time, a very small city with population of 115,777 in 1920 129,777 in 1930 and 114,332 in 1940. It was 3 miles long, 2½ miles wide, and Blacks and many Indians lived right in that area. The City Government did not have in City Hall thirty people working. Someone in that City Hall signed Mary A. Harris' name to those deeds.

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PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

To the Honorable, the Chief Justice and Associates Justices of the Supreme Court of the United States:

The Petitioner, HERBERT HARRIS, respectfully prays that a Writ of Certiorari issue to review the facts of my appeal and help me to get my property. I have been processing this case for over three years pro se, and now I need the help of the Supreme Court.

OPINION BELOW

The Court of Appeals entered its memorandum decision affirming the denial of Petitioner's Motion to Dismiss on May 25, 1983.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code Section 1254 (17^{1}).

CONSITITUIONAL PROVISIONS involved United States Consitution. I was denied the protection of the United States Constitution Article VII, Amendment XIV, Section I. No State shall make or enforce any law which abridges the privileges

or immunities of a citizen of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, or deny any person within its jurisdiction the equal protection of the law. I was denied this protection by the City of Norfolk and NRHA. The City of Norfolk tore down my aunt Mary A. Harris' property - 505 509 and 511 Cumberland Street on or about 1927 to 1928 without due process of law. The land was turned over to the Norfolk Redevelopment and Housing Authority to Seal and NRHA did seal it.

STATEMENT OF FACTS

That I, Herbert Harris, heir of Mary A. Harris by blood, and that I am an out-of-state unknown heir, and that I have been damaged by the City of Norfolk and the Norfolk Redevelopment and Housing Authority by being deprived of my aunt's properties, and that I have spent

thousands of dollars over four (4) years in and out of Norfolk and North Carolina researching records in both States about her property, suffering physically, mentally and being humiliated with the prejudice I received in Norfolk by the powers to be. The Norfolk Redevelopment and Housing Authority knew that a cloud hung over that property by a letter I received from them concerning Mary A. Harris' property being taken without due process of law. I left Norfolk on or about 1914 and I never returned until 1978.

Up to 1935, the City of Norfolk was three miles long and two miles wide. A police station was on one corner of Queen Street at Carrollton Street. I am a citizen of Washington, D. C. I have not lived in Virginia for over 69 years.

The City of Norfolk is 300 years old. The first slaves landed at Jamestown, Virginia in 1619. Virginia did not in 1619 and for 240 years, feel that a Black man had any rights that a white man had, and the White man has clung to those ideas until the Civil Rights Act was passed in 1964. Even to this day, the White man in Norfolk still takes property belong to Blacks and Indians without due process of law.

In 1840, a law was passed barring from Virginia. Indians went underground. Those that could pass for anything but an Indian after shaving off all their hair, got by with the help of Blacks, whom the Indians helped when Blacks ran away. My Aunt Mary A. Harris was a full-blooded Cherokee Indian that owned properties and lived in a settlement of citizens of the United States.

I filed this case under diversity 1331 in January 1981, Pro Se - Civil Action No. 81-100-N, challenging the authority of the City of Norfolk, Virginia in taking my Aunt's properties without due process of law. Mary A. Harris owned at her death in 1920, free of all incumbents, 505, 509 and 511 Cumberland Street and 1039 - 1041 Carrollton Street. The City knew that Mary A. Harris was dead. The City of Norfolk knew that I, Herbert Harris, was not in Norfolk or the City could not find me. The City of Norfolk had to be redeveloped and without the properties of 505 - 509 and 511 Cumberland Street, the City could not be redeveloped. The City of Norfolk knew that part of Norfolk was in a badly blighted state. The City of Norfolk gave peopleliving in that area paint to paint those houses, so that

people going to Jamestown World Fair would say that Norfolk looked good. In 1927 and 1928 the City of Norfolk tore down 505, 509 and 511 Cumberland Street, rezoned it in two lots and put it up for sale. From 1920 to 1946 no action was taken in Court about any of Mary A. Harris' properties. Carrollton Street was not torn down until 1942. The reason was 1039 - 1941 Carrollton Street were Houses of Prostitution. The lady of the house had to pay $125.00 a week which was collected each Monday morning. Prostitution was the third largest business in Norfolk, yet when the City of Norfolk went into Court in 1946, they report no income from any of Mary A. Harris's properties. Someone in the City Government was sealing and resealing 1039 and 1041 Carrollton Street and signing Mary A. Harris' name on the deeds. I shall name

each deed later on. Fraud and forgery started in 1921. The City of Norfolk intentionally concealed all this action from the heirs of Mary A. Harris for 26 years. The City at that time had no eminent domain law. It was the intention of the City to take Mary A. Harris' properties without due process of law and not pay one red penny for it.

Now during those 26 years, the City didn't try to find an heir of Mary A. Harris. The City was afraid of the law that governed the State of Virginia at that and 1897 Code 2920. The City knew and waited until a new law was passed in 1942 and still the city waited until 1946. A case settled by the Circuit Court on intent to deceive and conceal facts, Case No. 75-1603. I shall cite the case by the United States and Appellee. I have asked and refused to have a handwriting expert determine who signed

Mary A. Harris' name to all of those deeds. Only ten people worked in the City Clerk's office at that time. It would prove that someone in the Government of the city signed. Just think $250.00 a week from 1039 and 1041 Carrollton Street. Back in those days $250.00 a week could make someone rich. I have suffered mentally, physically and financially by being denied the properties of my Aunt. I only found out that my Aunt owned property in 1978 when I returned to Norfolk for the first time since 1914.

I was denied my constitutional rights of Article VII Amendment XIV Section I by the City not protecting my Aunt's properties, instead of tearing it down and selling the land before 1946.

Judge John A. Mackenzie stated that the Times Advocate has been used for

50 years. He did not say that it was a proper notice. Here are some properties owned by White people that was not put in the Times Advocate Tabloid to be sold at public auctions, but put in the Virginia Political Daily Newspaper. Deed to undersigned dated November 25, 1940, Deed Book 667 on page 213. Default. Public aution November 6, 1946 at 12 Noon. W.A. Charter Trustee, dated June 9. Lot 7 and 9 in Block 9 on notice in Clerk's office, Circuit Court for the County of Norfolk Map Book 17 at page 35. W. A. Charter, Commissioner. At 1132 Gardron Avenue, Lot 15, in Block 23, in said Block to Gordon Avenue. John Ford, Trustee. Deed of City Court of Norfolk on the 15th day of October 1946, in Chancery Sale 12 Noon, Lot 133 record A on Plat in Clerk's Office. Map Book 7 at page 71. Shield Parson, Commissioner. Public auction default. Frank Stallios,

Commissioner. June 25, 1923, Deed Book 406 at page 146. Will sale for cash Real Estate Board - 12 Noon, November 9, 1946, John Ford Trustee. Public Sale Deed of Trust 8-24-46, recorded in Clerk's Office, City of Norfolk. Deed Book 446 will sell November 6, 1946 at Noon. Map Book 7 at page 72, Lot 27 in Block 28, Paul W. Kear, Trustee, Judgment award by County Circuit, Judge Edward L Oart.

Following Deed conveying to City property to Talmadge Johnson to Elizabeth W. Kellam and others. Default - November 12, 1946. Offered for sale at public auction November 20, 1946. All certain Lots 23 and 24 in Block 8 on Plat of the Logan Park Home in Map Book 9, at page 69-71. Winston H. Irvin.

Special Commissioner sale June 10, 1946 at Noon - 802, 804, 806, 808 and 810 Lincoln Street and Bond 15th day of

October 1946, a Decree entered in Circuit Court of Norfolk will offer for sale at public auction all that certain pieces of property situated in Hunterville, City of Norfolk. Formerly known as Church Street. Lot No. 12, Deed Book 222 at page 88, Winston H. Hanckel, Special Commissioner.

Default dated April 2, 1945, Map Book 109 at page 280. Sale 12 Noon, November 12, 1946 by decree entered into by the City of Norfolk on October 18, 1946 at public sale, November 20 1946, at 12 Noon, known as No. 16-18 Nicholson Street, Special Commissioner H. B. Cutterman.

All of the transactions in properties above was owned by Whites. Not one of these properties was put in that Union Tabloid for White union members. You can not purchase it to May 1983 on any news-

paper stand in Norfolk, Virginia. All of this advertisement was in the Virginia Pilot Paper. It was the intention of the City of Norfolk to take Mary A. Harris' properties. Intentional effort to deny the heirs of Mary A. Harris that property. Everyone knew that the City had cleared off all of that land, and for the City to get it at a private sale for less than $2,500, when a public sale would have brought $20,000. No notice by publication or otherwise to heir of my Aunt from 1920 to 1946. . . 26 long years. It was the intention of the City of Norfolk to conceal all this information. Injustice seemed to follow the Black man and Indian. The Black man has won very few cases against the White man in Norfolk. The way he landed at Jamestown in shackles and things, the Courts of Virginia has laid a heavy hand on him when it came to law.

Just think, waiting 26 years to take her properties and getting it free. The Chrysler Motor Company purchased it and then gave back to the City of Norfolk a big sum of money the company paid for it.

STATEMENT OF THE CASE

My Aunt, Mary A. Harris is a full blooded Cherokee Indian. At her death in 1920, she owned four pieces of property, 505, 509 and 511 Cumberland Street and 1039 - 1041 Carrollton Street.

Mary A. Harris did not owe the City of Norfolk any real estate taxes or any other debts on record in the City Clerk's Office, which will prove that.

In 1927 to 1928, the City of Norfolk had Mary A. Harris' property torn down, rezoned and marked off lots, and in 1930 turned all that land over to the Norfolk Redevelopment and Housing Authority to sell. No Court action was taken by the

City and all this was done without due process of law. No notice by publication or otherwise to any of Mary A. Harris' heirs.

In 1935, a five-man commission was appointed by City Manager, Thomas P. Thompson, to study the slums of Norfolk. In 1938 the Virginia General Assembly passed Legislation enabling the formation of local authority to clear the slums. By that time all of that area including Cumberland Street was an open field. All this without going into Court, after 246 years without nothing. Then being able in later years getting some properties only three generations later have the City of Norfolk take away their homes from grand and great grandchildren, all without due process of law.

Nowhere in the State of Virginia can I get help. That is why I am praying

that this Honorable Court will give me assistance. Mary A. Harris as an Indian owning property in a settlement of citizens of the United States, applies to transactions by individual Indians living in White settlement and is not applicable to land which a tribal right of occupancy

Someone in the City Government signed Mary A. Harris' name to a deed selling her property to a John Council, Deed Book #274, page 400, before Notary Public I.E. M. Baum, Jr., given to Teste: James V. Trehiz, Clerk, by J. A. McCourt, D.C. July 11, 1923, John Council defaulted in his payments to Trustee Michael Cooper. Mary A. Harris paid off the note, $475.00. Deed Book 275-e, page 398. Notary Public Milton Earl Woodhouse. Teste: W. L. Prieur, Jr. Clerk, by J. A. McCourt, D.C. Deed Book #290D page 443. I hold the City of Norfolk for a handwriting expert for the signature of all the people that

signed those deeds after Mary A. Harris' death. And as yet, I have not received them. The signing of Mary A. Harris' name was the intention of the City to take Mary's property. Property at 1039 and 1041 Carrollton Street was not torn down until 1941, yet all this action went on for 21 years.

The City refused to talk to me. The City also refused to show me a documentary evidence that other bids were made at a public auction. It was private. Everyone in the know knew that the City was going to redevelop and that money could be made on that land. It was the intention of Norfolk to take Mary A. Harris' property right in the heart of the redevelopment.

Will the Court consider the Law enacted in 1897. Pub. St. C. 1898 . 9 D.C. 205.39, as it deals with contract

Virginia Law of 1897 Code 2920. Does a mortgage under sale lose its validity once a city puts a contract to that mortgage for the owner to pay a real estate tax? A breach in those payments to the City. Does a lien destroy that mortgage under sale? Does fraudulent concealment of facts and forge stop laches? How about first discovering facts about the properties? Case of intention in United States of American, Appellee v. Tommy Curtis Bunch , Appellant No. 75-2188, United States Court of Appeals, Fourth Circuit, argued March 5, 1976, decided March 13, 1976. Upholding intention. The City of Norfolk is not the State taking action, it is only a citizen that has got a charter to run a city and is subject rights as any other citizen before the law, incorporationed or not.

In terms of equity, but that either on one side from superior knowledge of the matter derived from a fiduciary relation or from other influence or on the other from weakness, dependence or trust justifiably report unfair advantage in a transaction is rendered probable. There the burden shifts, the transaction is presumed void, and it is incumbent upon the stronger party to show affirmatively that no deception was practiced. No undue influence was used, and that all was fair, open voluntary and well understood. Roger Green v. Roworth, 113, N.Y. 462.

When is the title of a person who negotiates an instrument defective. The title of a person who negotiates an instrument is defective within the meaning (of this Charter) when he obtained the instrument or any signature thereto by fraud or force and fear or other unlaw-

ful means or for an illegal consideration. When he negotiates it in breach of faith or under such circumstance or amount to fraud. Moss. Y.L.E. 107 78.

VIRGINIA CONTRACT LAW

The word used, awards, means awarding of punitive damage arriving out of misrepresentation in connection with sales. A finding for buyer on all three compensatory claims as condition to awarding punitive damage.

Fourth Circuit Court of Appeals argued December 4, 1975, decided July 21, 1976 before Judge Russell Widener and Thomson. Per curiam. The writer also spoke of an omission in fraudulent if it is falsely made or done or caused to be made with an (intent) to deceive. To act fraudulently means to act wilfully and with a specific (intent) to deceive or to cheat, ordinarily for the purpose of

either causing a financial loss to another person or to bring about some financial gain to oneself. Virginia Law of 1897, Code 2920, states ..."Taxes must be collected within five years. Not awards..." A statement or a claim or a document or an omission is fraudulent, it if is falsely made or committed or done or caused to be made with an (intent) to deceive.

United States Court of Appearls Fourth Circuit Nos. 75-1853-7554. I raise this question of (intentional concealment) of facts. Argued March 1, 1976, decided October 7, 1976.

ORDER

Herbert Harris

vs. No. 81-1619

City of Norfolk, et al.

Upon consideration of the appellant's pro se petition for rehearing,

IT IS ORDERED that the petition for rehearing is DENIED.

Entered at the direction of Judge Ervin with the concurrence of Judge Phillips. Judge Hall dissents from the denial.

Filed May 24, 1982

U.S. Court of Appeals
Fourth Circuit

CORRECTED ORDER

Herbert Harris

vs. No. 81-1619

City of Norfolk, et al.

Upon consideration of the appellees' petition for rehearing, by counsel,

IT IS ORDERED that the petition for rehearing is DENIED.

Entered at the direction of Judge Ervin with the concurrence of Judge Phillips. Judge Hall dissents from the denial.

Filed May 24, 1982

U.S. Court of Appeals
Fourth Circuit

HERBERT HARRIS
1828 Fourth Street, N. W.
Washington, D. C. 20001

I HEREBY CERTIFY that on the 17 day of October, 1983, a true copy of the foregoing was mailed, postage prepaid to City Attorney's Office of the City of Norfolk, Virginia, Mr. Francis N. Crenshaw, Esq., Virginia National Bank Building, Norfolk, Virginia 23510. Defendant Counsels.

Herbert Harris
HERBERT HARRIS

Opposition

83-682

Docket No. 82-2125

In the Supreme Court of the United States

October Term, 1983

HERBERT HARRIS,
Petitioner,

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CITY OF NORFOLK, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

I. Whether the Petitioner has failed to allege any material fact that would show that the Respondent took the land from Petitioner's aunt in a manner that did not conform with existing Virginia law and due process under the Fourteenth Amendment to the United States Constitution.

II. Whether the Petitioner has failed to show that Respondent did not initiate the action to enforce a tax lien within the time limits of an appropriate statute of limitations.

III. Whether the Petitioner is barred by the doctrine of laches from disputing the City's right to land acquired thirty-five years before Petitioner asserted his claim.

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BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI

STATEMENT OF THE CASE

On January 1, 1981, Petitioner Herbert Harris filed suit in the United States District Court for the Eastern District of Virginia seeking the return of land that allegedly belonged to his aunt, Mary Harris, and was bought at a tax auction by the City of Norfolk or,

in lieu of the land itself, ten million dollars ($10,000,000.00). On May 21, 1981, the District Court granted the motion of the City and the Norfolk Redevelopment and Housing Authority for summary judgment; Petitioner appealed and on December 24, 1981, the United States Court of Appeals for the Fourth Circuit upheld the District Court's dismissal for lack of jurisdiction under a federal statute, but remanded for the District Court "to determine if Harris presented a valid state law claim." In that opinion, the Fourth Circuit characterized this action as one challenging "a 1946 proceeding in which the City obtained title to land possessed by Harris' aunt at her death in 1920." After Petitioner amended his complaint, Respondent filed affidavits and other exhibits dealing with the suit in chancery that approved

the tax sale at which the City bought the land.[1] The District Court on December 1, 1982, granted Respondent's motion for summary judgment, holding that the sale conformed to Virginia law and did not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution. On April 12, 1983, the Fourth Circuit upheld that ruling. Petitioner now has asked the Court to grant him a writ of certiorari in order to review that opinion.

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[1]Exhibits A to M of the Respondent, filed with its motion for summary judgment in District Court, contain the Report of the Commissioner in Chancery in reference to a chancery suit filed in Circuit Court in the City of Norfolk to enforce a tax lien in favor of the City against certain real property owned by Mary A. Harris, based on delinquent taxes for the years 1931-46. City of Norfolk v. Mary A. Harris, etc., et al., Docket No. 9737, File No. 769-B.

SUMMARY OF THE ARGUMENTS

Respondent acquired the land in question, on which its cultural and convention center now stands, through a tax auction conducted pursuant to a chancery action in 1946 to enforce a tax lien. The action in every way conformed to Virginia law, including notice by posting at the courthouse and by publication in a weekly newspaper. Nothing about the procedure failed to conform to the requirements of due process. The 1946 proceeding by the City to enforce the tax liens was not barred by any statute of limitations. However, the City submits that this diversity action, filed in 1981 to challenge a 1946 state court proceeding and tax sale, is barred by the doctrine of laches, because of the thirty-five-year delay whereby the Petitioner waived

his rights and, because it would work a great hardship on the City of Norfolk. Given the lack of any material fact that was disputed by the Petitioner, summary judgment was appropriately granted by the District Court and upheld by the Circuit Court. No writ should issue from this Court to review that judgment.

ARGUMENT

I. THE PROCEEDING WHEREBY THE LAND IN QUESTION WAS TAKEN FROM PETITIONER'S AUNT IN EVERY WAY CONFORMED TO THE REQUIREMENTS OF VIRGINIA LAW AND DUE PROCESS.

It has been difficult to ascertain from Petitioner's complaint and various briefs specifically what causes of action he claims he has arising from the taking

of his aunt's property.[2] As Respondent argued to the District Court before the first grant of summary judgment, such a confusing complaint fails to give Respondent the proper notice under Federal Rule of Civil Procedure 8(a)(2). The District Court wrote in its December 1, 1982, opinion that Petitioner's "pleadings are repetitive, convoluted and at points nearly incomprehensible. They give a more thorough exploration of the history of prostitution in Norfolk than they do of his claims against the City of Norfolk."

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[2]Petitioner never made any factual allegations that would lead the Court to conclude that he is his aunt's heir. The District Court, in its earlier opinion, ruled as to his lack of standing that Harris' complaint "fail[ed] to show any interest in complainant, Herbert Harris, to support a complaint." The Fourth Circuit did not address this ruling on Harris' lack of standing in its December 24, 1981, opinion, instead remanding for examination of any possible state law claims.

The District Judge, however, tried to sort out the claims, answering them one by one in his 1982 opinion.

Of these charges, Petitioner appears to contest most strenuously the validity of the 1946 proceeding whereby the City acquired his aunt's land. Specifically, Petitioner alleges, with no supporting factual allegations or documents, that the auction was a private not a public sale and that the notice given was inadequate.

The City of Norfolk filed a chancery suit in the Circuit Court of the City of Norfolk entitled City of Norfolk v. Mary A. Harris, etc., et al., Docket No. 9737, File No. 769-B, to enforce a tax lien in favor of the City against certain real property owned by Mary A. Harris, based upon delinquent taxes for the years 1931-1946. From exhibits A to M attached

to Respondent's 1982 motion for summary judgment, it can be seen that the proceeding was regular and in accordance with the customary legal procedure for enforcing a tax lien against real property.

A proper bill of complaint was filed along with an affidavit that due diligence had been used to locate Mary A. Harris, without success. Va. Code Ann., 1942, § 6069. Both Mary A. Harris and other potentially interested parties were made defendants under the traditional cognomen of "parties unknown."[3]

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[3] In this case, Mary A. Harris was joined as a party in all her known names in the bill of complaint and it is not claimed that she was ever known by any other name than those set forth. Consistent with well-settled Virginia law, when it is believed that unknown parties might be potentially interested in the subject matter of the litigation, "parties unknown" were also properly made defendants. Va. Code Ann., 1942, § 6069; Goins v. Garber, 131 Va. 59, 65-66 (1921).

An order of publication was entered, posted at the courthouse, and published in a newspaper for four (4) successive weeks. Va. Code Ann., 1942, § 6070. Notice was given by the Commissioner in Chancery to whom the case had been referred, and depositions were taken in November, 1946. The Commissioner in Chancery made extensive efforts to ascertain the correct identity, family status, whereabouts, and other relevant information concerning Mary A. Harris, and reported his findings to the Court.

It appears from the court papers that a Special Commissioner appointed by the Court, L. Shields Parsons, Jr., advertised for six (6) days and then conducted a public auction at which the City of Norfolk bid $1,150.00 for the property. The price paid by the City was the full appraised value of the

property; the Court concluded that this was a "reasonable offer" and should be accepted, thereafter ordering a judicial sale to the City of Norfolk. The sale comported with Virginia statutory requirements, Va. Code Ann., 1942, § 6268, and was subsequently confirmed by the Court. The confirmation of the sale by the Court was a judgment, possessing the same force and effect as any other adjudication by a court of competent jurisdiction. Copland's Ex'ors v. Copland, 146 Va. 33, 44 (1926).

At the time of the Court's confirmation of the sale in 1948, Virginia law provided that an "unknown party" not served with process who did not appear could petition for a rehearing of a delinquent tax suit within two years "to have any injustice in the proceedings corrected." Va. Code Ann., 1942, § 6072.

It does not appear from the Petitioner's complaint in the instant case or any other source that any action was taken to contest or challenge the action of the Circuit Court of Norfolk at any time between March 26, 1948, the date of that Court's final decree in the case, and the filing of the present complaint in January, 1981.

In fact, the complaint failed to allege any facts which, if proven, would establish any illegality in any aspect of the proceedings. Petitioner's frequently repeated claim that Mary A. Harris did not receive any money from the sale of her real property is readily explainable; the exhibits show that the appraised fee simple market value of that property, i.e., $1,150.00, was only approximately 50 percent of the total

tax liens upon it. Accordingly, after satisfaction of the liens and the payment of expenses incident to the suit, there was nothing left to be distributed.

The Petitioner's claim that the sale was a private one is not backed by any factual allegation to support that contention. In fact, as the District Judge wrote in his 1982 opinion, "This proposition is totally contraverted by the documentary evidence." The exhibits detail the 1946 chancery suit to enforce the tax lien. They show that the Special Commissioner was directed by the Court to sell Mrs. Harris' land at a public auction, that notice of the public sale was placed in a daily newspaper, and that the Circuit Court later approved the sale as in accordance with its orders.

Petitioner's principal contention is that notice was insufficient because

it was published in a weekly union tabloid, The Times-Advocate, rather than the daily Virginian-Pilot, which had a greater circulation. The District Judge wrote in his 1981 opinion that Petitioner had "rais[ed] an inquiry as to the effectiveness of The Times-Advocate as an instrument of publication. This Court can take note that The Times-Advocate has been accepted for more than fifty (50) years, and still is." In fact, while Virginia Code § 6071a only required two (2) successive weeks of publication in suits to enforce liens for real estate taxes, Exhibit F reflects newspaper publication in the Harris proceeding for four (4) weeks. In the 1982 opinion, the Court wrote that "the statute prescribing the method of sale of Mrs. Harris' land requires only that the notice be published in 'such newspaper

as the court may prescribe,' not that it be published in a daily newspaper or the local newspaper with the largest circulation." (Citing Va. Code Ann., 1942, §§ 6070 & 6071a). The Court went on to cite Webster's New Collegiate Dictionary (1953), which defines a tabloid as a type of newspaper and the plaintiff's own complaint and summary judgment brief at 17, both of which admit that The Times-Advocate is often used for the publication of legal notices. In its 1982 opinion, the District Court also found it "curious that Mr. Harris claims that he would have been alerted to the proceeding against his aunt's land if the notice were published in the Norfolk Virginian-Pilot, but that he was not alerted to the sale of her land when the notice of the public auction was published in the Norfolk Virginian-Pilot

for six consecutive days."

The procedure for enforcing tax liens in Virginia fully conforms to that required to satisfy due process. Petitioner cites no cases for the proposition that, although the City complied with Virginia statutory law, that statute did not supply the Petitioner or Mary Harris with due process under law.

II. RESPONDENT WAS NOT BARRED BY ANY APPLICABLE STATUTE OF LIMITATIONS FROM INITIATING THE TAX-ENFORCEMENT PROCEEDING.

The Petitioner contends repeatedly that the tax-lien proceeding against his aunt's property was barred by a five-year Virginia statute of limitations, which he identifies as § 2920 of the Virginia Code of 1897. That statute, however, is only the general statute of limitations for personal actions and has

no application to actions to enforce tax liens. The language of the statute itself speaks only in terms of "contracts," "awards," and "accounts." Real estate tax liens, however, are created not by contract, but by statute. Va. Code Ann., 1942, § 2454. It therefore plainly appears from the face of § 2920 that it does not apply to actions to enforce tax liens.

It is well settled that unless provided otherwise by constitution or statute, expressly or by necessary implication, statutes of limitations do not run against the government regarding suits involving public or governmental rights. 53 C.J.S. Limitations of Actions § 15 at 940-943. This principle has been specifically applied to actions by municipalities to collect taxes. Id. § 83 at 1954-56; Jensen v. Fordyce Bath House, 190

S.W.2d 977 (Ark. 1945). The writer is not aware of any Virginia statute of limitations in the 1930's or 1940's applicable to "liabilities created by statute." The District Judge in the 1982 opinion wrote, "The Court is aware of no statute of limitation in effect in 1946 which limited the time in which actions to enforce tax liens could be taken." Absent such a statute, the general rule of non-limitation on municipalities enforcing their rights applies.

III. LACHES SHOULD BAR PETITIONER FROM CHALLENGING THE SUFFICIENCY OF A PROCEEDING THAT TOOK PLACE THIRTY-FIVE YEARS AGO WHERE RESPONDENT WOULD BE GREATLY PREJUDICED BY THE DELAY.

This Court is of course required to apply state statutes of limitations in diversity cases involving state-created causes of action. Guaranty Trust Co. v.

York, 326 U.S. 99 (1945). Since it is a general maxim of Virginia equity practice that "equity follows the law," 7 Michie's Jurisprudence Equity § 22 at 43-44, it is submitted that state law regarding the doctrine of laches should similarly be followed in a diversity action involving the equity jurisdiction of the federal court.

In this case, Mary A. Harris is alleged to have died in 1920. The exhibits show that the Norfolk Circuit Court proceeding was initiated in 1946 and ended in March, 1948. Yet no action whatsoever is alleged or shown to have been taken by any of her heirs prior to the initiation of the present action in 1981. In the meantime, as reflected by the complaint itself, extensive redevelopment was completed in the area. The Chrysler Hall/Scope complex, the City's cultural

and convention center, were constructed upon the land at a cost of millions of dollars.

Under Virginia law, "laches" is defined as "a delay in the enforcement of one's rights as works a disadvantage to another; or, such delay without regard to the effect it may have upon another as will warrant the presumption that the party has waived his right." 7 Michie's Jurisprudence Equity § 26 at 47. Most of the key criteria justifying a finding of laches exist in this case, including extensive unexplained delay, the death of parties and/or witnesses and the loss of other evidence, and a change of condition and disadvantage to the Respondent and the citizens of the City. Id. §§ 31-32 at 56-60.

It would serve no useful purpose to burden this brief with numerous Virginia

cases on laches, all of which turn largely upon their own particular facts. In one illustrative case, the Virginia Supreme Court held that a delay of only fifteen years in seeking to set aside a conveyance of land was barred by laches. Puckett v. Jessee, 195 Va. 919 (1954) (The Court held laches barred a 1951 suit to declare a 1936 deed from certain church trustees void because the trustees were not authorized to sell the property and had not obtained court approval).

The Petitioner did not bring his present action until thirty-five (35) years after the chancery action was brought and sixty-one (61) years after his aunt's death, when the property had become the site of the City's multi-million-dollar cultural and convention center. It is accordingly submitted that this action is barred by laches.

IV. SUMMARY JUDGMENT WAS APPROPRIATE WHERE NO MATERIAL FACT WAS DISPUTED BY PETITIONER.

The District Court's December 1, 1982, opinion granted Respondent's summary judgment motion; that decision was upheld by the Fourth Circuit, which unanimously found the appeal to be "without merit" on April 12, 1983.

The principal judicial inquiry required by Federal Rule of Civil Procedure Rule 56(c), which is the heart of the summary judgment procedure, is whether any genuine issue of material fact exists. 10 Wright & Miller Federal Practice and Procedure § 2725 at 498. It is clear that a party may not repel a motion for summary judgment by resting upon the mere unsupported allegations of his pleading, but must allege or present specific facts to indicate the existence of a dispute as to a material fact. Rule 56(e),

Fed.R.Civ.P.; Foy v. Norfolk and Western Railway Company, 377 F.2d 243, 246 (4th Cir. 1967). The bare contention that there are disputed facts, no matter how often repeated, does not suffice to block summary judgment. Zoby v. American Fidelity Company, 242 F.2d 76, 80 (4th Cir. 1957). Moreover, once the moving party has adduced factual materials which, if uncontroverted, would entitle him to a determination of the case in his favor, the burden then shifts to the opposing party, who must at his peril show that the case does contain factual issues. Ross Coal Company v. Cole, 249 F.2d 600, 606 (4th Cir. 1957); Sweet v. Childs, 507 F.2d 675, 679 (5th Cir. 1975).

In the present instance, it is difficult to imagine what genuine issue of material fact could possibly be developed if the case were allowed to proceed

to trial. The person upon whose rights the Petitioner seeks to assert a claim has, according to him, been deceased for more than sixty (60) years. The judicial proceeding sought to be challenged took place approximately thirty-five (35) years ago, and it is highly unlikely that any person with a direct personal recollection of any aspects of that proceeding is still available. The papers in that proceeding itself, therefore, are likely to be the best, if not the only, evidence of probative value. The pertinent court papers were submitted to the District Court by the Respondent as exhibits attached to Respondent's motion for summary judgment and Petitioner failed to present specific facts establishing the existence of a dispute as to any material fact, including those shown in the exhibits.

The District Court wrote of those documents, "In the face of such powerful documentary evidence, the plaintiff may not rest on his pleadings to create a material issue of fact. Fed.R.Civ.P. 56(e); See Kipper v. Ewell, 538 F.2d 564 (4th Cir. 1976); Atkinson v. Bass, 579 F.2d 865 (4th Cir.) cert. denied, 439 U.S. 1003 (1978)." The Court of Appeals, stating that "the dispositive issues recently have been decided authoritatively," affirmed the grant of summary judgment to the City "on the reasoning of the district court."

The issues were clear and were clearly dealt with by the District Court, as the Appeals Court stated. Therefore, the writ should not issue in this case.

CONCLUSION

Because the 1946 proceeding whereby the City bought Petitioner's aunt's property conformed in every respect to the requirements of Virginia law and due process and was not time barred; because the Petitioner is barred by laches from asserting a thirty-five-year-old claim arising out of that 1946 proceeding; and because there is no dispute as to any material fact, this Court should decline to issue a writ of certiorari to review the judgment below.

Respectfully submitted,

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Counsel of Record
HAROLD P. JUREN
Deputy City Attorney
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Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that I have served three (3) copies of this Brief in Opposition to Petition for a Writ of Certiorari upon the Petitioner, Herbert Harris, 1822 Fourth Street, N.W., Washington, D. C., 20001, pursuant to the requirements of Rule 33 of the Rules of the Supreme Court of the United States, by depositing same in a United States mail box, with first class postage prepaid, addressed to Petitioner as set forth above, on or before November 16, 1983.

I further certify that I am a member of this Court, and that all parties required to be served have been served on or before November 16, 1983.

Philip R. Trapani

PHILIP R. TRAPANI

Of counsel for
Respondents

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

HERBERT HARRIS,	]	
	]	
Complainant,	]	
	]	
v.	]	CIVIL ACTION
	]	NO. 81-100-N
CITY OF NORFOLK	]	
ET AL.,	]	
	]	
Defendants.	]	

ORDER

This matter came on upon the motions of the City of Norfolk and Norfolk Redevelopment and Housing Authority, defendants, to dismiss. The motions were supported by briefs. The complainant has filed a reply brief, and the matter was fully argued by counsel for defendants and by complainant, pro se.

The Motion to Dismiss will be GRANTED as to all defendants.

Even giving the complainant every consideration for his pro se complaint,

and listening carefully to his oral arguments against the Motion to Dismiss, and construing the language as broadly and liberally as possible, the complaint falls far short of stating a cause of action. As a matter of fact, it fails to show any grounds for jurisdiction and fails to show any interest in complainant, Herbert Harris, to support a complaint.

Any policy of the United States with regard to tribal lands of Indians (to which complainant's complaint devotes five pages) confers no jurisdiction in his case. That a former owner may have been complainant's Aunt, confers no jurisdiction on this Court.

While not stated in any pleading, and not argued, it is apparent to the Court that real property owned by Mary A. Harris was sold for taxes by the City of Norfolk in a suit in the Circuit Court

of the City of Norfolk in 1946. Process by Order of Publication was published in the Times-Advocate, says the complainant, and he then raises an inquiry as to the effectiveness of the Times-Advocate as an instrument for publication. This Court can take note that the Times-Advocate has been accepted for more than fifty (50) years, and still is.

The motion for summary judgment is GRANTED and the Complaint is DISMISSED.

It is so ORDERED.

/s/ John A. MacKenzie
United States District Judge

Norfolk, Virginia
May 21, 1981.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 81-1619

Herbert Harris,

Appellant,

v.

City of Norfolk, Virginia, Norfolk Redevelopment and Housing Authority, S. Cope [sic] and all others defendant claiming title to certain lands allegedly head [sic] unlawfully,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. John A. MacKenzie, District Judge.

Submitted: November 6, 1981

Decided: December 24, 1981

Before HALL, PHILLIPS, and ERVIN, Circuit Judges

(Herbert Harris, Appellant Pro Se. Francis N. Crenshaw, Crenshaw, Ware & Johnson, and Philip R. Trapani, City Attorney, Harold P. Juren, Deputy City Attorney, for the Appellees.)

PER CURIAM:

Herbert Harris brought this action against the City of Norfolk (City) and other defendants to challenge a 1946 proceeding in which the City obtained title to land possessed by Harris' aunt at her death in 1920. Harris, who proceeds pro se, asserted jurisdiction under either § 1331 or § 1362 of Title 28 U.S.C. for a violation of section 12 of the Indian Nonintercourse Act of 1834. 25 U.S.C. § 177. The district court granted summary judgment for the defendants on the basis that the complaint presented no basis for the exercise of federal jurisdiction. Harris appeals that decision to this Court.

We readily note our agreement with determination that the district court lacked jurisdiction of this case under the Nonintercourse Act. As the answers of the defendants indicate, however, Harris alleges several violations of state law. Since Harris alleges that he is a resident of Washington, D.C., we believe that he properly invoked the diversity jurisdiction of the district court, 28 U.S.C. § 1332. See Gordon v. Leeke, 574 F.2d 1147 (4th Cir.), cert. denied, 439 U.S. 970 (1978). We therefore vacate the judgment of the district court and remand this case for further proceedings to determine if Harris presented a valid state law claim.

The record and other materials before this Court indicate that oral argument would not significantly aid the decisional process. We therefore

dispense with oral argument, vacate the judgment of the district court, and remand the case for further proceedings.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

HERBERT HARRIS,	]	
	]	
Plaintiff,	]	
	]	
v.	]	CIVIL ACTION
	]	NO. 81-100-N
CITY OF NORFOLK, ETC., ET AL.,	]	
	]	
	]	
Defendants.	]	

MEMORANDUM AND ORDER

The plaintiff Herbert Harris is the nephew of a woman who once owned four plots of land in Downtown Norfolk near or on the site where the Norfolk Scope (an entertainment and sports coliseum) now stands. Mr. Harris' aunt, Mary A. Harris, died in 1926. In 1946 the City bought her land in a proceeding it had instituted to enforce a lien for delinquent taxes which had accrued from 1933 to 1946. In January 1981 the plaintiff instituted this suit pro se challenging

the City's actions in taking title to his aunt's land. In May of 1981 this Court dismissed this action as outside the Court's jurisdiction under the Indian Nonintercourse Act. 28 U.S.C. § 177 and 28 U.S.C. § 1362. The Fourth Circuit affirmed this portion of the Court's holding but remanded the case for closer examination of Mr. Harris' state law claims.

Harris' Claims

Mr. Harris' pleadings are repetitive, convoluted, and at points nearly incomprehensible. They give a more thorough explanation of the history of prostitution in Norfolk than they do of his claims against the City of Norfolk. Nevertheless the Court is mindful of its obligation to protect the rights of pro

se plaintiffs. Therefore, giving all of the plaintiff's pleadings the most favorable reading possible, the plaintiff seems to be making the follcwing complaints about the actions of the City: (1) that the City should have "closed out" the estate of his aunt in 1920, (2) that the City was negligent in not collecting taxes on his aunt's land from 1920 to 1933, (3) that the City forged his aunt's signature to certain deeds between 1920 and 1946, (4) that the City may not collect taxes more than five years after the taxes have come due, (5) that the sale of his aunt's land was at private sale rather than a public auction, and (6) that the publication of the notice of the tax proceeding was inadequate. For the reasons set forth below, the Court finds that each of these contentions is without merit.

1. It is difficult to determine exactly what Mr. Harris means when he claims that the City should have "closed out" the estate of his aunt in 1920. The City has no obligation to care for the estates of deceased landowners. Its only obligation is to collect the taxes on the property, if necessary by selling the property. This is precisely what the City did in this case. Therefore this portion of Mr. Harris' complaint fails to state a claim on which relief can be granted.

2. It is also curious that Mr. Harris is complaining that the City did not collect taxes on his aunt's property from 1920 to 1933. If Mr. Harris enjoyed a rightful interest in the land at that time, the City's failure to collect taxes surely would not have prevented him from asserting his rights. There can be

no showing that Mr. Harris was in any way harmed by the City's failure to collect taxes during this time period. This portion of Mr. Harris' complaint fails to state a claim for which relief can be granted.

3. Mr. Harris also claims that the City forged his aunt's name to deeds conveying the property at 1039 and 1041 Carrolton Street from Mrs. Harris to third persons after Mrs. Harris' death. This contention is inconsistent with Mr. Harris' other claims in this case. The record establishes that the City bought this property at a proceeding to enforce a tax lien in 1946, and Mr. Harris does not contest this fact. The record of this sale indicates that this property belonged to Mary A. Harris until it was sold in 1946. The thrust of Mr. Harris' claim is that the procedures surrounding

the sale of his aunt's land in 1946 were improper. Therefore it is difficult to understand how he can also claim that the City had taken this very land by forging his aunt's signature to deeds prior to 1946. There being no material fact in question on this issue, summary judgment in favor the defendants on this issue is GRANTED.

4. Mr. Harris claims that the City's action in attempting to collect back taxes was barred by the five year statute of limitations of § 2920 of the Virginia Code of 1897. This argument is without merit. This section of the Virginia Code is the general statute of limitation governing personal actions based on an "award" or "contract." It does not govern actions to enforce tax liens. The Court is aware of no statute of limitations in effect in 1946 which

limited the time in which actions to enforce tax liens could be taken. There being no material fact in question on this issue, summary judgment in favor of the defendants on this issue is GRANTED.

5. Mr. Harris makes the bald allegation that the sale of his aunt's land was at a private sale and not at a public auction. This proposition is totally controverted by the documentary evidence. The documents indicate that a special commissioner was appointed and directed to sell Mrs. Harris' land at a public auction, that proper notice was given of the public sale in the Norfolk Virginian-Pilot newspaper, and that such sale was subsequently approved by the Circuit Court of the City of Norfolk. In the face of such powerful documentary evidence, the plaintiff may not rest on his pleadings to create a material issue of

fact. Fed.R.Civ.P. 56(e); See, Kipper v. Ewell, 538 F.2d 564 (4th Cir. 1976); Atkinson v. Bass, 579 F.2d 865 (4th Cir.) cert. denied, 439 U.S. 1003 (1978).

6. Finally, Mr. Harris claims that the publication of the notice of the proceeding against his aunt's land was inadequate because it was published in The Times-Advocate, a weekly publication, rather than the Norfolk Virginian-Pilot, a daily publication with a greater circulation. However, it must be noted that the statute prescribing the method of the sale of Mrs. Harris' land requires only that the notice be published in "such newspaper as the court may prescribe," not that it be published in a daily newspaper or the local newspaper with the largest circulation. §§ 6071a and 6070 Code of Virginia, 1942. Therefore the publication in the Times-Advocate could

be considered inadequate only if the Times-Advocate is not a newspaper. Mr. harris [sic] makes an argument based on the Library of Congress archives that the Times-Advocate is a "tabloid" rather than a "newspaper." This argument is without merit. The Court will not make a distinction between the labels "tabloid" and "newspaper." Indeed Webster's New Collegiate Dictionary (1953) defines a tabloid as a type of newspaper. Moreover the plaintiff admits that the Times-Advocate is often used for the publication of legal notices. Plaintiff's Brief Amended Complaint, Brief in Support of Summary Judgment, and Motion for Trial by Jury, p. 17. Therefore, the Court holds that the Times-Advocate was a suitable newspaper for the publication of the notice of the proceeding against Mrs. Harris' land.

Defenses

Although the Court has already ruled that each of Mr. Harris' claims is without merit, it should also be noted that the defendants have raised certain meritorious defenses not mentioned above. First, the Norfolk Redevelopment and Housing Authority (NRHA) filed a motion to dismiss for failure to state a claim on the ground that the plaintiff has not alleged any wrongdoing by NRHA. The Court agrees with NRHA. Mr. Harris' only complaints are against the City of Norfolk. Defendants Chrysler Museum and Scope should be dismissed for the same reason. In addition, the City has raised the equitable defense of laches. In light of the fact that 61 years passed between the time of his aunt's death and the time Mr. Harris first asserted his rights to her property, the Court agrees

that laches is a valid defense. The Court also finds it curious that Mr. Harris claims that he would have been alerted to the proceeding against his aunt's land if the notice were published in the Norfolk Virginian-Pilot, but that he was not alerted to the sale of her land when the notice of the public auction was published in the Norfolk Virginian-Pilot for six consecutive days.

For all of the foregoing reasons, the defendants' motion for summary judgment is GRANTED.

It is so ORDERED.

/s/ John A. MacKenzie
United States District Judge

Norfolk, Virginia
December 1, 1982.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 82-2125

Herbert Harris,

Appellant,

v.

City of Norfolk, Virginia, Norfolk Redevelopment and Housing Authority, S. Cope [sic] and all others defendant claiming title to certain lands allegedly head [sic] unlawfully,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. John A. MacKenzie, District Judge.

Submitted: February 9, 1983

Decided: April 12, 1983

Before HALL, PHILLIPS, and ERVIN, Circuit Judges

(Herbert Harris, Appellant Pro Se. Geoffrey F. Birkhead, CRENSHAW, WARE & JOHNSON; Philip R. Trapani, City Attorney, Harold P. Juren, Deputy City Attorney, for the Appellees.)

PER CURIAM:

A review of the record and the district court's opinion discloses that this appeal from that court's order granting summary judgment is without merit. Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument and affirm the judgment below on the reasoning of the district court. Harris v. City of Norfolk, C/A No. 81-100-N (E.D. Va., Dec. 1, 1982).

AFFIRMED.